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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) No. CR-10-923 SBA
12)
13 Plaintiff,) DEFENDANT'S *UNOPPOSED MOTION*
vs.) TO DISMISS PETITION FOR SUMMONS
14) FOR OFFENDER UNDER SUPERVISION
ERNESTO SOLON,) AND TERMINATE SUPERVISION
15)
16 Defendant.)
17 _____)

18 On March 12, 2012, Ernesto Solon was sentenced to 24 months custody with one year of
supervised release to follow. He commenced that one-year period of supervised release on
November 2, 2013. [Petition for Summons, Docket No. 21.] Immediately upon his release from
custody, Mr. Solon began working for Atlantic Plant Services as a painter and sandblaster on the
new Bay Bridge. He has continued as a full-time employee of Atlantic Plant Services since that
time and is currently working on the Richmond Bridge. Mr. Solon's one-year period of
supervised release was scheduled to end on November 2, 2014. Mr. Solon was alleged to have
submitted a urinalysis test that was positive for cocaine on September 23, 2014. United States
Probation submitted a request for a summons alleging a violation of the standard condition that

1 Mr. Solon refrain from any unlawful use of a controlled substance. That petition was signed, and
 2 a summons was issued by the Court, on November 3, 2014. The issuance of the summons
 3 occurred the day after the end of Mr. Solon's period of supervised release. For the reasons set
 4 forth below, the petition must be dismissed because Mr. Solon's term of supervised release
 5 expired prior to the issuance of the summons.

6 There are circumstances when an alleged violation that occurred prior to the expiration of
 7 the term of supervised release can be adjudicated following the expiration of that term, but those
 8 circumstances are not present here. The relevant legal standard is set forth at 18 U.S.C. §
 9 3583(i):

10 (i) **Delayed revocation.**--The power of the court to revoke a term of supervised
 11 release for violation of a condition of supervised release, and to order the
 12 defendant to serve a term of imprisonment and, subject to the limitations in
 13 subsection (h), a further term of supervised release, extends beyond the expiration
 14 of the term of supervised release for any period reasonably necessary for the
 15 adjudication of matters arising before its expiration *if, before its expiration, a*
 16 *warrant or summons has been issued on the basis of an allegation of such a*
 17 *violation.*

18 U.S.C. §3583(i) (emphasis added). In other words, unless a warrant or summons was issued
 19 *before the expiration of the term of supervised release*, this Court has no power to revoke the
 20 term of supervised release. *See, e.g., U.S. v. Ceballos-Santa Cruz*, 756 F.3d 635, 637 n.2 (8th
 21 Cir. 2014) ("Pursuant to 18 U.S.C. § 3583(i), a court can revoke a term of supervised release
 22 after the term has expired, so long as the violation occurred *and the warrant alleging the*
 23 *violation issued before the expiration of the term of supervised release*"') (emphasis added).

24 In this case, Mr. Solon's term of supervised release expired on November 2, 2014. The
 25 summons alleging a violation was not issued until November 3, 2014, the day after the expiration
 26 of the term of supervised release. Because the summons was issued after the expiration of the
 term of supervised release, the Court has no power to revoke the term of supervised release. The
 term has expired and Mr. Solon is no longer under this Court's subject matter jurisdiction.

This is an unopposed motion. The undersigned has discussed this matter with both the

